

FILED

MAR 17 2008

CLERK, U.S. DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA
BY *JMD* DEPUTY

1 Kevin Gerry (State Bar # 129690)
2 The Law Offices of Kevin Gerry
A Professional Corporation
1001 Olive Street
3 Santa Barbara, California 93103
(310) 275-1620

4 Attorneys for Defendant Marcus Food Co.
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10 UNITED STATES DISTRICT COURT
11 SOUTHERN DISTRICT OF CALIFORNIA
12
13

14 CATLIN UNDERWRITING AGENCIES
15 LIMITED,

16 Plaintiff,

17 vs.

18 SAN DIEGO REFRIGERATED SERVICES,
19 INC., dba HARBORSIDE dba SAN DIEGO
TERMINALS, PLA-ART INTERNATIONAL
20 dba SAN DIEGO COLD STORAGE; SAN
DIEGO COLD STORAGE, INC., MIGUEL
21 CUEVA aka MIGUEL TAMAYO; SERGIO
HERNANDEZ; MARCUS FOODS, INC.,
22 and DOES 1 through 50, inclusive,

23 Defendants.

24 CASE NO.: 08-CV-0173-WQH-JMA

25 DEFENDANT MARCUS FOOD CO.,
ERRONEOUSLY SUED AS MARCUS
FOODS, INC.,'S ANSWER TO THE
COMPLAINT FOR DAMAGES

26
27 TO ALL PARTIES AND COUNSEL OF RECORD:
28

1 Defendant Marcus Food Co., (hereinafter "Defendant") hereby Answers the
2 Complaint for Damages filed by Plaintiff Catlin Underwriting Agencies Limited (hereinafter
3 "Plaintiff") as follows:
4
5

6 1. Defendant Marcus Food Co., lacks sufficient information or belief to either admit or
7 deny this allegation.

8 2. Defendant Marcus Food Co., lacks sufficient information or belief to either admit or
9 deny this allegation.

10 3. Admit.

11 4. Admit.

12 5. Admit.

13 6. Admit.

14 7. Admit.

15 8. Defendant Marcus Food Co., denies these allegations. Defendant Marcus Food
16 Co., is a Kansas Corporation with its principal place of business in Wichita, Kansas.

17 9. Defendant Marcus Food Co., lacks sufficient information or belief to either admit or
18 deny this allegation.

19 10. Admit.

20 11. Admit.

21 12. Defendant Marcus Food Co., lacks sufficient information or belief to either admit or
22 deny this allegation.

23 13. Defendant Marcus Food Co., lacks sufficient information or belief to either admit or
24 deny this allegation.

1 14. Defendant Marcus Food Co., lacks sufficient information or belief to either admit or
2 deny this allegation.

3 15. Defendant Marcus Food Co., lacks sufficient information or belief to either admit or
4 deny this allegation.

5 16. Defendant Marcus Food Co., lacks sufficient information or belief to either admit or
6 deny this allegation.

7 17. Defendant Marcus Food Co., lacks sufficient information or belief to either admit or
8 deny this allegation.

9 18. Admit.

10 19. Admit.

11 20. Admit

12 21. Admit.

13 22. Admit.

14 23. Admit.

15 24. Admit.

16 25. Admit.

17 26. Admit

18 27. Admit.

19 28. Admit.

20 29. Defendant Marcus Food Co., lacks sufficient information or belief to either admit or
21 deny this allegation.

22 30. Admit.

23 31. Admit.

24 32. Admit.

1 33. Admit.

2 34. Admit.

3 35. Admit.

4 36. Admit.

5

6 37. Defendant Marcus Food Co., denies these allegations. Once the Marcus Food Co.,
7 products were released without authorizations they were no longer traceable.

8 38. Admit.

9 39. Admit.

10 40. Admit.

11 41. Admit.

12 42. Defendant Marcus Food Co., lacks sufficient information or belief to either admit or
13 deny this allegation.

14 43. Defendant Marcus Food Co., lacks sufficient information or belief to either admit or
15 deny this allegation.

16 44. Defendant Marcus Food Co., lacks sufficient information or belief to either admit or
17 deny this allegation.

18 45. Defendant Marcus Food Co., lacks sufficient information or belief to either admit or
19 deny this allegation.

20 46. Defendant Marcus Food Co., lacks sufficient information or belief to either admit or
21 deny this allegation.

22 47. Defendant Marcus Food Co., incorporates by reference each response as set forth in
23 paragraphs 1 through 46 inclusive.

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1 48. Defendant Marcus Food Co., lacks sufficient information or belief to either admit or
2 deny this allegation.

3 49. Defendant Marcus Food Co., lacks sufficient information or belief to either admit or
4 deny this allegation.

5 50. Defendant Marcus Food Co., lacks sufficient information or belief to either admit or
6 deny this allegation.

7 51. Admit.

8 52. Defendant Marcus Food Co., denies these allegations. While Defendant Marcus
9 Food Co., alleges that the conduct (the unauthorized release of food products) was
10 deliberate and intentional, Defendant Marcus Food Co., also alleges, in the alternative, that
11 said conduct may have been inadvertent or negligent.

12 53. Defendant Marcus Food Co., lacks sufficient information or belief to either admit or
13 deny this allegation.

14 54. Defendant Marcus Food Co., denies these allegations. While Defendant Marcus
15 Food Co., alleges that the conduct (the unauthorized release of food products) was
16 deliberate and intentional, Defendant Marcus Food Co., also alleges, in the alternative, that
17 said conduct may have been inadvertent or negligent.

18 55. Not Applicable.

19 56. Defendant Marcus Food Co., incorporates by reference each response as set forth in
20 paragraphs 1 through 55 inclusive.

21 57. Admit.

22 58. Admit.

23 59. Defendant Marcus Food Co., denies these allegations. While Defendant Marcus
24 Food Co., alleges that the conduct (the unauthorized release of food products) was

1 deliberate and intentional, Defendant Marcus Food Co., also alleges, in the alternative, that
2 said conduct may have been inadvertent or negligent.

3 60. Not Applicable.

4 61. Defendant Marcus Food Co., incorporates by reference each response as set forth
5 in paragraphs 1 through 60 inclusive.

6 62. Defendant Marcus Food Co., lacks sufficient information or belief to either admit or
7 deny this allegation.

8 63. Defendant Marcus Food Co., lacks sufficient information or belief to either admit or
9 deny this allegation.

10 64. Defendant Marcus Food Co., lacks sufficient information or belief to either admit or
11 deny this allegation.

12 65. Defendant Marcus Food Co., lacks sufficient information or belief to either admit or
13 deny this allegation.

14 66. Defendant Marcus Food Co., lacks sufficient information or belief to either admit or
15 deny this allegation.

16 67. Defendant Marcus Food Co., lacks sufficient information or belief to either admit or
17 deny this allegation.

18 68. Not Applicable.

19 69. Defendant Marcus Food Co., incorporates by reference each response as set forth
20 in paragraphs 1 through 68 inclusive.

21 70. Defendant Marcus Food Co., lacks sufficient information or belief to either admit or
22 deny this allegation.

23 71. Admit.

1 72. Admit.

2 73. Admit.

3 74. Defendant Marcus Food Co., lacks sufficient information or belief to either admit or
4 deny this allegation.
5

6 75. Defendant Marcus Food Co., lacks sufficient information or belief to either admit or
7 deny this allegation.
8

9 76. Not Applicable.
10

AFFIRMATIVE DEFENSES

13 1. The Complaint for Damages, as well as each and every purported claim for relief or
14 cause of action alleged therein, fails to state a claim upon which relief can be
15 granted.
16

17 2. The Complaint for Damages, as well as each and every purported claim for relief or
18 cause of action alleged therein, is barred by the applicable statute of limitations.
19

21 3. The Complaint for Damages, as well as each and every purported claim for relief or
22 cause of action alleged therein, is barred by Plaintiff's failure to migrate their
23 damages, if any.
24

26 4. The Complaint for Damages, as well as each and every purported claim for relief or
27 cause of action alleged therein, is barred by the doctrine of unclean hands.
28

- 1 5. The Complaint for Damages, as well as each and every purported claim for relief or
2 cause of action alleged therein, is barred because the Defendant Marcus Food Co.,
3 at all times acted in conformity with, and reliance upon, applicable rules, regulations,
4 and standards.
- 5
- 6
- 7 6. The Complaint for Damages, as well as each and every purported claim for relief or
8 cause of action alleged therein, is barred because defendants' obligations were
9 waived, excused or prevented by the conduct of Plaintiff and/or a third party.
- 10
- 11
- 12 7. The Complaint for Damages, as well as each and every purported claim for relief or
13 cause of action alleged therein, is barred by the Plaintiff or a third party's breach of
14 contract.
- 15
- 16
- 17 8. The Complaint for Damages, as well as each and every purported claim for relief or
18 cause of action alleged therein, is barred by the failure to satisfy conditions
19 precedent and/or subsequent.
- 20
- 21
- 22 9. The Complaint for Damages, as well as each and every purported claim for relief or
23 cause of action alleged therein, because Plaintiff's damages, if any, were sustained
24 as a direct and proximate result of the intervening and superseding acts and/or
25 omissions of persons, things, or entities, other than Defendant Marcus Food Co.,
26 that were outside the control of Defendant Marcus Food Co.
- 27
- 28

1 10. Plaintiff intentionally, recklessly or negligently failed to investigate the matters that
2 are the subject of the Complaint for Damages and disregarded either known
3 information and risks or information and risks that Plaintiff should have known
4 through the exercise of reasonable care.
5

6
7 11. Defendant Marcus Food Co., was not a party to the contract at issue, nor was
8 Defendant Marcus Food Co., in privity with a party to the contract at issue.
9

10 DATED: March 14, 2008

11 THE LAW OFFICES OF KEVIN GERRY

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15 Kevin Gerry
16 Attorneys for Plaintiff Marcus Foods
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1 **PROOF OF SERVICE**
2

3 I, Kevin Gerry, declare under penalty of perjury under the laws of the State of California
4 that the following is true and correct:
5

6 I am over the age of 18 and not a party to this case.
7

8 My business address is: 1001 Olive Street
9 Santa Barbara, CA 93101
10

11 On the date stated below, the foregoing documents described as:
12

13 **PLAINTIFF MARCUS FOOD CO.,'S ANSWER TO THE COMPLAINT FOR DAMAGES**
14

15 Were served on the interested parties in said action, by:
16

17 **(MAIL SERVICE)** placing the original or true copies thereof, enclosed in a sealed
18 envelope, first class postage pre-paid and addressed to:
19

20 **(OVERNIGHT MAIL)** placing the original or true copies thereof, enclosed in a
21 sealed overnight mail envelope addressed to:
22

23 **(PERSONAL SERVICE)** delivering said documents by hand to:
24

25 **(FACSIMILE)** causing delivery via facsimile to:
26

27 **(E-MAIL)** causing delivery via electronic mail to:
28

29 The following addressees:
30

31 Jack Hsu
32 Christensen & Ehret
33 222 W. Adams Street, suite 2170
34 Chicago, IL 60606
35

36 This document was executed in Santa Barbara, California on: 3/17/08
37

38 Date

39 
40 Declarant
41